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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRYSANTHUS MORDECAI
THOMAS,

Defendant and Appellant.

G040392

(Super. Ct. No. 99HF0194)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed herein on March 4, 2010, be modified as follows:

On page 10, in the second full paragraph beginning “Our conclusion in *Thomas I*,” after the second sentence ending “must reflect the law prior to *Blakeley*,” add the following three new sentences:

In defendant’s petition for rehearing, he argues he was entitled to an instruction on involuntary manslaughter at the retrial because it was the only adequate remedy for his trial counsel’s ineffective assistance during the

first trial. Defendant's trial counsel's ineffective assistance was adequately remedied in the reversal of the judgment of conviction in *Thomas I*. Therefore, even assuming defendant has not forfeited this argument, it is without merit.

This modification does not effect a change in the judgment. The petition for rehearing is DENIED.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.